

Assembly Bill No. 1151

CHAPTER 847

An act to amend Section 911.4 of, and to add Section 6252.6 to, the Government Code, to amend Section 1527.6 of the Health and Safety Code, and to add Sections 16000.1 and 16501.15 to the Welfare and Institutions Code, relating to foster care.

[Approved by Governor October 11, 2003. Filed
with Secretary of State October 12, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1151, Dymally. Foster care.

Existing law requires a claim for personal injury against a public entity, which includes the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state, or against an employee of a public entity, to be presented not later than 6 months after accrual of the cause of action. Existing law provides that when a claim is not filed within the 6-month period, an application for leave to present the claim within a reasonable time not to exceed one year after the accrual of the cause of action may be filed in accordance with specified provisions. Existing law provides that the time during which a person is detained or adjudged a dependent child of the juvenile court pursuant to certain provisions of law shall, under certain circumstances, not be counted in that one-year period.

This bill would provide that the time during which a minor is adjudged to be a dependent child of the juvenile court, pursuant to certain provisions of law, shall not be counted in that one-year period if the minor is without a guardian ad litem or conservator for purposes of filing civil actions.

Existing law establishes the Foster Family Home and Small Family Home Insurance Fund within the State Department of Social Services to pay, on behalf of foster family homes and small family homes, claims of foster children, their parents, guardians, and guardians ad litem resulting from occurrences peculiar to the foster-care relationship and the provision of foster-care services. Existing law requires that any claim against the fund filed by a foster parent or a 3rd party be submitted to the fund within the applicable period of limitation for the appropriate civil action underlying the claim. Existing law provides that if a person entitled to bring an action under specified laws is, at the time the cause

of action accrued, either a minor or insane, the time of this disability is not part of the time limited for the commencement of the action.

This bill would provide that a claim against the fund filed by a foster parent or 3rd party is subject to the latter provision described above that extends the limitation of time for the commencement of an action for a minor.

Under existing law, juvenile court records are generally confidential, with certain limited exceptions. Existing law requires the release to the public of juvenile case files that pertain to a deceased dependent child of the juvenile court, pursuant to an order by the juvenile court after a petition has been filed and interested parties have been afforded an opportunity to file an objection. Existing law authorizes the presiding judge of the juvenile court to issue an order prohibiting or limiting access to the juvenile case file under certain circumstances.

This bill would provide that after the death of a minor foster child, designated information regarding that child shall be subject to disclosure pursuant to the California Public Records Act.

Existing law requires that if a child is removed from the physical custody of his or her parents, preferential consideration be given to a request by a relative of the child for placement of the child with the relative.

Existing law sets forth the policy of the state that all children placed in foster care have certain rights, and requires social workers and facilities providing social services to children in foster care to provide those children with information regarding those rights.

This bill would declare legislative intent that nothing in the decision of the California Court of Appeal in *County of Los Angeles v. Superior Court of Los Angeles: Real Party in Interest Terrell R.* (2002) 102 Cal.App.4th 627 shall be held to change the standards of liability or immunity for injuries to children in protective custody as they existed prior to that decision, and to confirm the state's duty to comply with all requirements under certain federal law that are relevant to the protection and welfare of children in foster care.

Existing law relating to the establishment of a case plan for a child in foster care expresses a policy that these children be in a safe home or out-of-home setting.

This bill would specify that "safe" for these purposes means a home or setting that is free from abuse or neglect, as described in specified existing law. The bill would make a legislative finding that the definition of safe contained in the bill is declaratory of existing law.



The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the Duty to Foster Children Reaffirmation Act.

SEC. 2. Section 911.4 of the Government Code is amended to read:

911.4. (a) When a claim that is required by Section 911.2 to be presented not later than six months after the accrual of the cause of action is not presented within that time, a written application may be made to the public entity for leave to present that claim.

(b) The application shall be presented to the public entity as provided in Article 2 (commencing with Section 915) within a reasonable time not to exceed one year after the accrual of the cause of action and shall state the reason for the delay in presenting the claim. The proposed claim shall be attached to the application.

(c) In computing the one-year period under subdivision (b), the following shall apply:

(1) The time during which the person who sustained the alleged injury, damage, or loss as a minor shall be counted, but the time during which he or she is mentally incapacitated and does not have a guardian or conservator of his or her person shall not be counted.

(2) The time shall not be counted during which the person is detained or adjudged to be a dependent child of the juvenile court under the Arnold-Kennick Juvenile Court Law (Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code), if both of the following conditions exist:

(A) The person is in the custody and control of an agency of the public entity to which a claim is to be presented.

(B) The public entity or its agency having custody and control of the minor is required by statute or other law to make a report of injury, abuse, or neglect to either the juvenile court or the minor's attorney, and that entity or its agency fails to make this report within the time required by the statute or other enactment, with this time period to commence on the date on which the public entity or its agency becomes aware of the injury, neglect, or abuse. In circumstances where the public entity or its agency makes a late report, the claim period shall be tolled for the period of the delay caused by the failure to make a timely report.

(3) The time shall not be counted during which a minor is adjudged to be a dependent child of the juvenile court under the Arnold-Kennick Juvenile Court Law (Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code), if the minor is without a guardian ad litem or conservator for purposes of filing civil actions.

SEC. 3. Section 6252.6 is added to the Government Code, to read:

6252.6. Notwithstanding paragraph (2) of subdivision (a) of Section 827 of the Welfare and Institutions Code, after the death of a foster child who is a minor, the name, date of birth, and date of death of the child shall be subject to disclosure by the county child welfare agency pursuant to this chapter.

SEC. 4. Section 1527.6 of the Health and Safety Code is amended to read:

1527.6. (a) Any claim against the fund shall be filed with the fund in accordance with claims procedures and on forms prescribed by the State Department of Social Services or its designated contract agency.

(b) Any claim against the fund filed by a foster parent or a third party shall be submitted to the fund within the applicable period of limitations for the appropriate civil action underlying the claim, subject to subdivision (a) of Section 352 of the Code of Civil Procedure as that section applies to a minor. If a claim is not submitted to the fund within the applicable time, there shall be no recourse against the fund.

(c) The department shall approve or reject a claim within 180 days after it is presented.

(d) No person may bring a civil action against a foster parent for which the fund is liable unless that person has first filed a claim against the fund and the claim has been rejected, or the claim has been filed, approved, and paid, and damages in excess of the payment are claimed.

SEC. 5. Section 16000.1 is added to the Welfare and Institutions Code, to read:

16000.1. (a) The Legislature finds and declares all of the following:

(1) The state has a duty to care for and protect the children that the state places into foster care, and as a matter of public policy, the state assumes an obligation of the highest order to ensure the safety of children in foster care.

(2) A judicial order establishing jurisdiction over a child placed into foster care supplants or limits parental or previous adult authority.

(3) Nothing in this section is intended to change the balance of liability between the state and the counties as it existed prior to the decision of the California Court of Appeal in *County of Los Angeles v. Superior Court of Los Angeles: Real Party in Interest Terrell R.* (2002) 102 Cal.App.4th 627, as established by the decision of the California Court of Appeal in *Scott v. County of Los Angeles* (1994) 27 Cal.App.4th 125. Furthermore, nothing in this section is intended to increase or decrease the liability of the state as it existed prior to the *Terrell R.* case.

(b) (1) It is the intent of the Legislature that nothing in the decision of the California Court of Appeal in *County of Los Angeles v. Superior Court of Los Angeles: Real Party in Interest Terrell R.* (2002) 102

Cal.App.4th 627, shall be held to change the standards of liability and immunity for injuries to children in protective custody that existed prior to that decision.

(2) It is the intent of the Legislature to confirm the state's duty to comply with all requirements under Part B of Title IV of the Social Security Act (42 U.S.C. Sec. 620 et seq.) and Part E of Title IV of the Social Security Act (42 U.S.C. Sec. 670 et seq.) that are relevant to the protection and welfare of children in foster care.

SEC. 6. Section 16501.15 is added to the Welfare and Institutions Code, to read:

16501.15. As used in subdivisions (b) and (c) of Section 16501.1, a home or setting that is "safe" means that the home or setting is free from abuse or neglect, as described in Section 11165.5 of the Penal Code.

SEC. 7. The Legislature finds and declares that the addition of Section 16501.15 to the Welfare and Institutions Code made by Section 6 of this act is declaratory of existing law.

